

**BOARD OF COMMISSIONERS
FOR THE
TOWN OF UPPER MARLBORO**

ORDINANCE: 2020-07 **DRAFT**
SESSION: Regular Town Meeting
INTRODUCED: November 10th, 2020
DATE ENACTED: XXXXXXXXX

**AN ORDINANCE TO ESTABLISH URBAN FOREST REGULATIONS
FOR THE TOWN OF UPPER MARLBORO.**

AN ORDINANCE relating to the protection, preservation and to promote the Urban Forest of Upper Marlboro as part of a larger ecosystem which contributes to air, noise and visual pollution control, moderates climate extremes, promotes energy conservation, and has aesthetic value affecting property values and the community quality of life. This Ordinance is also enacted to establish a Shade Tree Board to be responsible for the tree program which regulates the planting and maintenance of trees in public places, and to advise, provide continuity, act as an advocate and coordinate contributions and interests in urban greenery.

WHEREAS, Maryland's Roadside Tree Law was passed in 1914, whereby said Law and its regulations were developed to protect roadside trees by ensuring their proper care and protection and to ensure their compatibility with an efficient and dependable public utility system; and

WHEREAS, the Maryland Department of Natural Resources Forest Service (DNR Forest Service) protects trees along all public road rights-of-way, regardless of ownership, through enforcement of the Roadside Tree Law; and

WHEREAS, before a roadside tree is trimmed or cared for in any way, a Tree Care Permit must be obtained from the DNR Forest Service, and a permit is also required when underground construction, such as tunneling, trenching, or boring, impact the root zone of a roadside tree, and planting a tree within the public road right-of-way also requires a permit; and

WHEREAS, any work performed on a roadside tree must be done by a Roadside Tree Care Expert, employed by a public agency, or a Maryland Licensed Tree Expert and when tree care is performed on a roadside tree without a permit, a fine may be assessed or more severe actions taken by the DNR Forest Service (or a local municipality); and

WHEREAS, Section 5-403(d) of NR Art. of Md. Ann. Code authorizes, with certain exceptions involving public utilities, a county or municipality to adopt an ordinance for the planting, care, and protection of roadside trees that is more stringent than the requirements of Md. Roadside Tree Law if the law or ordinance does not conflict with said State law; and

WHEREAS, pursuant to Section 82-16(1) of the Town Charter, the Board shall have the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or the charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights, and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health,

safety, comfort, convenience, welfare, and happiness of the residents of the Town and visitors thereto and sojourners therein; and

WHEREAS, the Town Board of Commissioners finds that it is in the best interest of the Town to designate and regulate the Town's urban forest, including certain trees located on private property, for the health, safety, and welfare of the public.

NOW, THEREFORE, the Board of Commissioners of the Town of Upper Marlboro, State of Maryland, does ordain and enact the following:

URBAN FOREST REGULATIONS FOR THE TOWN OF UPPER MARLBORO

Section 1. Definitions

A. "Right-of-Way of a Public Road" means that land the title to which, or an easement for which, is held by the State, Prince George's County, or the Town of Upper Marlboro for use as a public road.

B. "Street Tree" or "Roadside Tree" means a plant that has a woody stem or trunk that grows all, or in part, within the right-of-way of a public road. This definition includes trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the Town. For the purposes of this Ordinance, this definition and the other definitions found herein, they shall be consistent with the definitions found in Maryland's Roadside Tree Law, Natural Resources Article §§5-401 to 5-423 of the Annotated Code of Maryland, and regulations made thereto found in the Code of Maryland Regulations (COMAR), Reg. 08.07.02.01 *et seq.* A roadside tree is any tree whose trunk grows all or in part within a public road right-of-way, regardless of ownership of the physical property.

C. "Street tree care" means: (i) removal of a roadside tree; (ii) planting or maintenance, or both, of a roadside tree; (iii) application of pesticide to a roadside tree; or treatment that may affect the health or growth of a Roadside Tree, and (iv) any other activity or behavior regulated by this Ordinance.

D. "Park Trees" are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual park names and all open areas owned by the Town, or to which the public has free access as a park. All street trees and park trees under the jurisdiction of the Town, by law or intergovernmental agreement, are considered as part of the Town's Urban Forest and are subject to the provisions of this Ordinance.

E. "Town Roadside Tree Care Expert" means an individual representing the Town who: (i) is designated to supervise that government's roadside tree planting and maintenance operations; (ii) has passed the Forest Service's examination for Roadside Tree Care Experts; and (iii) has been approved by the Forest Service as qualified to supervise the Town's tree care program.

Section 2. Establishment of a Shade Tree Board and the Board's Oversight

A. There shall be created a Board to be known and designated as the "Shade Tree Board" composed of no less than three members appointed by the President with the approval of the Board. The majority of the Tree Board shall be made up of Town residents. It shall be the responsibility of the Tree Board to study, investigate, advise, inventory and develop and/or update and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such a plan will be presented to the Town Board of Commissioners and upon its acceptance and approval shall constitute the official comprehensive tree plan for the Town. The

Tree Board shall choose its own officers, make its own rules and regulations for the conduct of meetings and keep records of its proceedings.

B. A majority of the members shall be a quorum for the transaction of business. In the case that there are not enough interested residents to serve on a Tree Board or said Board is unable to convene a quorum or function due to lack of members for a period of six weeks or more, the Director of Public Works, or the Town Board of Commissioners' designee, shall serve as the Town's Urban Forest Coordinator who shall oversee the program. If there is a Tree Board in place and functioning, the Public Works representative shall serve as the Town's designee to assist the Tree Board as needed.

C. Where applicable and not contrary to this Ordinance, the Shade Tree Board shall be further governed by Ordinance 2019-02 (The Town of Upper Marlboro Committee and Other Appointed Bodies Practices and Procedures Ordinance).

Section 3. Public Tree Care

A. To the extent permitted by the Maryland's Roadside Tree Law and this Ordinance, the Town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the boundaries of all streets, avenues, squares and public grounds as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The Town Shade Tree Board may recommend to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest.

B. It shall be unlawful as a normal practice for any person, firm, or Town department to top or prune any Street Tree, Park Tree or other tree on public property to such a degree so as to remove the normal canopy and disfigure the tree. It shall be unlawful for any person other than the Town to cut down any Street Tree or Park Tree without written consent of the Town. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this Ordinance as determined by the Tree Board. Every owner of any tree overhanging any street or right-of-way within the Town shall prune the branches so that such view of any street intersection and so that there shall be a clear space of fourteen feet (14') above the surface of the street or nine feet (9') above the surface of the sidewalk, as is consistent with Ordinance 2017-03. Said owners shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The Town shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight or interferes with visibility of any traffic control device or sign. The street tree species to be planted shall be determined by the Shade Tree Board.

C. This Ordinance does not apply to (i) other governmental entities having jurisdiction over park lands within the Town, (ii) routine maintenance of public utility rights-of-way by public utility companies or their contractors, or (iii) the cutting or clearing of public utility rights-of-way for new transmission of distribution lines.

Section 4. Dead or Diseased Tree Removal on Private Property

The Town shall have the right to cause the removal of any dead or diseased trees on private property within the Town, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the Town. The Town will notify in writing the owners of such trees. Removal shall be accomplished by said owners of such trees. Removal shall be done by said

owners at their own expense within sixty (60) days after the date of service of notice. In the event of failure of owners to comply with such provisions, the Town shall have the authority to remove such trees and charge the cost of removal to the owners to be collected in the same manner as property taxes. The Town Code Enforcement Officer(s) are charged with this enforcing this Ordinance.

Section 5. Approval required to Take Action affecting the Urban Forest

No person shall remove or destroy or cause removal or destruction of a tree on any public property or undertake construction or other action that may significantly and prematurely detract from the health or growth of a tree located on public property without first having obtained written permission from the Town Administrator which shall only be issued upon the presentation of an application bearing the approval of the State Forester assigned to the Town or the Town’s duly authorized Roadside Tree Care Expert. Any violation of this Ordinance shall constitute a municipal infraction for which a citation may be issued.

Section 6. Review by Board of Town Commissioners

The Town Board of Commissioners shall have the right to review the conduct, acts, and decisions of the Town Tree Board. Any person may appeal from any ruling or order of the Town Tree Board to the Board of Town Commissioners who may hear the matter and make a final decision.

Section 7. Administrative and Judicial Review

A. A decision of the Shade Tree Board or other official of the Town under this Ordinance may be appealed for error to the Town Board of Commissioners. Any municipal infraction citation issued under this Ordinance shall be stayed from judicial adjudication pending a final decision by the Board.

B. Except as stated herein, any person aggrieved by a decision of the Board of Commissioners with regard to an application for a permit, consent or permission filed under the provisions of this Ordinance and who appeared before the Board in person, by an attorney, or in writing, shall have the right to appeal the decision of the Board to the Circuit Court for Prince George’s County, Maryland under the provisions of Title 7, Chapter 200 of the Maryland Rules of Procedure.

Section 8. Penalty

Except as otherwise stated in this Ordinance, any violation of any section of this Ordinance shall be deemed a municipal infraction and any person upon conviction thereof shall be fined not more than One Thousand Dollars (\$1,000.00).

Section 9. Severability

Should any part of this Ordinance be held invalid, all remaining parts shall remain in effect.

AND BE IT FURTHER ENACTED AND ORDAINED by the Board of Commissioners of the Town of Upper Marlboro, Maryland that pursuant to the Town Charter, this Ordinance shall be posted in the Town office and a fair summary of it shall be published once in a newspaper of general circulation in the Town and effective 20 days after passage by the Board.

AYES: _____

NAYES: _____

ABSENT: _____